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## **The Cultural Logics of Illegality: Living Outside the Law in the Mongolian Gold Mines**

Mette M. High

In Mongolia mining has over the years played a very different role in projects of state-formation<sup>1</sup>. Whereas some historical epochs have sought to limit the extraction of minerals in the Mongolian cultural region, others have celebrated mining for its potential promotion of economic growth and large-scale industrialization (High and Schlesinger 2010). At a time when overgrazing of the steppe is a growing concern, declining health a worrying reality, and rural income opportunities decreasing (see previous chapters), much attention is today on the mining sector. It is presently the fastest growing sector of the Mongolian economy, at its peak increasing by more than 33 percent per year (National Statistical Office of Mongolia, 2006:203). In 2008, mineral production generated more than 75 percent of national export revenue and almost 43,000 people officially worked for mining companies. As such, mining can be seen as a pillar of today's industrial society, bringing progress and prosperity to the Mongolian steppe<sup>2</sup>. This is indeed how the extractive industry was described by Mongolian politicians during the socialist regime (Rupen, 1979; Worden and Savada, 1991). In the 1970s and 1980s large-scale mining was envisioned as a way of guiding Mongolia away from individualistic nomadism towards the attainment of Soviet Communism (see Sanders 1982, 1987). The heavy mining machinery, the man-made industrial landscape, and the huge labour force were emblematic of the socialist vision<sup>3</sup>. Despite the political shifts and severe economic crises since the early 1990s, the industry has managed to continue its prophetic existence, now promoting free-market ideals and neo-liberal reforms.

As described in other chapters on mining in this volume, recent decades have witnessed a significant boom in the Mongolian formal mining sector and a large gold rush has also materialized. Despite harsh weather and arduous work conditions, thousands of people migrate to the mining camps in their search for the precious metal. With more than 100,000 active miners involved in the gold rush (ILO, 2004:1), substantial amounts of gold are unearthed and huge sums of money change hands beyond the official, formal channels of transaction and taxation. International advisors to the Government of Mongolia are urging for amendments to the current Minerals Law in order to incorporate informal sector mining into a legislative and fiscal framework (World Bank 2004a, 2008). Furthermore, international aid organizations emphasize how informal sector miners are marginalized and powerless in the face of intimidations by local authorities and large mining companies (SDC and MRPAM,

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<sup>1</sup> The research for and writing of this chapter have been supported primarily by an Economic and Social Research Council (ESRC) Postgraduate Studentship (PTA-030-2003-00784), Wenner-Gren Dissertation Fieldwork Grant (Gr. 7376) and a British Academy Post-Doctoral Fellowship (PDF/2009/423).

<sup>2</sup> The Minister of Mineral Resources and Energy in Mongolia, D. Zorigt, said in a recent interview: "Mining is the backbone of the Mongolian economy. If you ask me for a vision of Mongolia's future there are many countries around the world that have developed based on their natural resources (...). I think we have a great chance, given our political system and our natural resource endowments to become a country that has an economy that is market-based and a social welfare system that takes care of its people when it is needed" (Kohn, 19 Sep 2009).

<sup>3</sup> The vision of mining as foundational to societal transformation was far from unique to Mongolia. Throughout the Eastern Bloc, mining was positioned as ideologically central to the Leninist project (Lenin, 1947) and economically to the trading success of the Council for Mutual Economic Assistance (1949 – 1991).

2005)<sup>4</sup>. By following the legislative practices of certain Latin American countries, advisors suggest that Mongolia should provide a legislative framework that both regulates the current gold rush and protects the miners (SAM, 2008). Although there has been significant changes to the Minerals Law and other legislation related to mining in recent years, it remains uncertain to what extent the Government of Mongolia will legalize artisanal mining, extending the state's growing role in formal sector mining operations to incorporate today's gold rush practices.

Instead of discussing the general economic and legal rationalizations commonly applied in macro-level analyses of informal sector mining, this chapter is concerned with the gold rush as it is currently developing in Mongolia. Whereas longitudinal, quantitative comparisons between countries and continents can help illuminate transnational trends, detailed cultural analysis is useful in understanding the particularity of a practice. This means that by attending to people's own views and practices, we are in a position to understand not only how the Mongolian gold rush is conceived locally, but also why it unfolds in the way it does. By recognizing cultural particularity, this chapter approaches the gold rush as more than an economic phenomenon of facts and figures; it also emerges as a messy contemplation on Mongolian ways of life.

By analyzing legal documents on state law alongside ethnographic data on the gold rush, I consider why artisanal mining, whilst most commonly incorporated into legal frameworks elsewhere in the world, remains outside the law in Mongolia. Although state laws are drafted, ratified and executed far from the mining camps, I follow Pottage and Mundy (2004) in recognizing laws as both *legal* and *social* products. That is, whilst laws are produced by legal institutions, they are also informed by and respond to the everyday world 'outside' such institutions. In taking this relationship between law and society seriously, I will show how laws can tell us about legal processes of law-making whilst also providing insights into contemporary Mongolian society. Rather than applying a circular, state-centred logic that sees illegality as merely that which is not endorsed by the law, I approach illegality as a legal construction that separates and dissociates particular forms of sociality from their wider cultural validation. As such, the notion of illegality is a powerful construction that offers clues about Mongolian views of how people ought to live. In order to understand why the current gold rush is excluded from state law, I thus suggest that it is necessary to look beyond the reasons advanced by the numerous advisors to and commentators on the Government of Mongolia. Specifically, this chapter argues that the present gold rush involves a way of life that the country's legislators may not desire to endorse and formalize, regardless of the 'lessons learnt' in Latin America and elsewhere. By offering insights into the relationship between law and practice, this chapter thus aims to shed light on the ways in which lives are lived in the mines, whilst also facilitating, more broadly, a better understanding of international advisorship and legislative decision-making in Mongolia.

## **Artisanal and small-scale mining**

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<sup>4</sup> See also ILO (2007) for calls for intervention due to the involvement of child labour in the hazardous work environment of the gold rush.

The recent surge in informal sector mining in Mongolia is neither a unique nor isolated phenomenon. At present an estimated minimum of 15 million people worldwide are directly involved in *artisanal and small-scale mining* (ASM) and a further 80 – 100 million people are dependent on this sector for their livelihoods (CASM:4). Although there is much debate concerning the exact definition of ASM, it is commonly defined as: “Mining by individuals, groups, families or cooperatives with minimal or no mechanization, often in the informal sector of the market” (MMSD, 2002:4). These mining practices are carried out almost exclusively in countries with a highly unequal distribution of wealth and are therefore commonly considered a ‘poverty phenomenon’ by international aid and lending organizations<sup>5</sup>. Countries with the largest number of people working in the ASM sector include Bolivia, Burkina Faso, China, Ecuador, Ghana, India, Indonesia, Mali, Papua New Guinea, Philippines, Tanzania, and Zimbabwe (MMSD, 2002:11). Despite its surprising absence, the estimated number of people directly involved in the Mongolian informal mining sector significantly exceeds that of other countries and should be included in recognized lists of ASM countries.

Artisanal and small-scale mining is generally labour-intensive and provides low mineral outputs. In the popular media, ASM is therefore rarely described as a significant mineral producer compared to formal sector mining companies. However, given the large number of people involved in ASM across the world, their activities account for an estimated 15–20 percent of the world’s current production of non-fuel minerals (CASM:8). This constitutes a substantial amount of wealth shifting hands along informally organized channels, impacting not only individual livelihoods but also national and global economies. In Tanzania, for example, where the ASM sector was legalized in the late 1980s, official gold production rose sharply from US\$0.55 million in 1985 to US\$38.78 million in 1992 (MMSD, 2002:30). In some countries, such as Ghana and Indonesia, the ASM sector even surpasses the production figures of the corresponding formal mining sector. Within the ASM sector, a broad range of minerals are mined, including bauxite, gold, iron, limestone, marble as well as precious gems such as diamonds, emeralds, opals, and sapphires. In Mongolia, informal sector mining is almost exclusively concerned with gold, yet other minerals such as fluor spar and coal are also mined (Murray and Grayson, 2003:16; Baatar and Grayson, 2009; Grayson and Baatar, 2009). In the extraction of minerals, ASM reportedly has a more negative environmental impact than mining by medium to large-scale companies (MMSD, 2002:36). Apart from poorly developed and adapted mining technologies, ASM is carried out by thousands of individual miners, thereby rendering the control and monitoring of environmental violations difficult and expensive. The most significant environmental impacts include mercury and cyanide pollution, damage to water sources, erosion, and deforestation. Given the financial profits and environmental costs of informal sector mining, it would seem desirable to incorporate ASM into a legal and fiscal framework, potentially facilitating more focus on and investment into the sector.

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<sup>5</sup> Artisanal mining has recently become central to so-called ‘pro-poor strategies’; an approach that seeks to maximise the potential of people, rather than their technology or productive resources, to capitalize on ‘sustainable economic opportunities’ (see for example Labonne and Gilman, 1999).

According to a recent report (MMSD, 2002), however, mining legislation is often too difficult for governments to enforce and too bothersome for individual miners to comply with. The report describes how mining operators are generally required to: Possess a valid mining title (concession, claim, etc.), comply with the environmental legislation, possess an environmental operation license, register the company with the mining authority or other fiscal authorities, register staff at the national security system and pay taxes (such as royalties and company taxes). Given this long list of requirements, the report suggests that:

The lack of political will to create an adequate framework for legalizing ASM can be explained by personal interests related with [*sic*] the possibilities for corruption, money laundering, and similar illegal practices, enabled by the informal status of the ASM sub sector (MMSD, 2002:7).

I recognize that such purposes may also lie behind the reluctance displayed by Mongolian politicians to formalize ASM activities in Mongolia. As described elsewhere in this volume, corruption flourishes throughout the Mongolian region and is not limited to people of particular ranks or social spheres<sup>6</sup>. Indeed, as Zimmerman argues (see earlier chapter), corruption can be seen as an important and all-pervasive socially constitutive practice. Rather than assuming corruption to be excluded from or exist in opposition to legal processes, I suggest we view competing personal interests backed by bribes and other incentives to form part of the negotiations and draftings of the Mongolian legislation<sup>7</sup>. Acknowledging the diverse political and moral agendas of those involved, I will turn to a closer examination of the Mongolian mining legislation and consider how state law defines a desirable relationship between people and the riches of the land.

## **The Mongolian mining legislation**

The corpus of Mongolian legislation related to mining has been subject to intense scrutiny and debate since the collapse of the socialist regime in 1991. Reviewing the most significant changes in the post-socialist mining legislation, this section describes the kinds of mining activities that have at various times been endorsed by the Mongolian state. This delineation not only indicates culturally validated forms of human engagement with the land and its minerals, but also concretizes the point at which such engagement enters the ranks of illegality.

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<sup>6</sup> In addition to the ratification of the United Nations Convention Against Corruption in 2005 and a new Anti-Corruption Law in 2006, several international aid organizations have recently highlighted issues of corruption in Mongolia. For an example of the multiple bribery paths recognized in the country, see the most recent survey carried out by The Asia Foundation (2009).

<sup>7</sup> There have been numerous accusations and rumours of corruption among high-ranking politicians, influential aid organization and international companies. Whilst acknowledging such practices, it remains unreasonable to assume that state legislation is a mere mirror-image of the involved parties' personal interests. Apart from producing a simplified image of the legislative processes, such a view of state law also ignores the extent to which legal constructions refer to everyday realities beyond the institutions within which they were created.

In 1989 socialist state co-operations were forced to relinquish their long-standing monopoly on the mining sector and allow private investors to carry out geological surveys and invest in mining ventures. It was in this turbulent year that the Law on Subsoil was swiftly enacted. Its stated purpose was “to regulate issues related to the use and protection of subsoil in the interests of the present and future generations” (Mongol Ulsyn Ih Hural, 1989: Article 1). It specified that the subsoil was the property of the state and could only ever be leased to others (*zövhön ashigluulahaar olgoh*). These legal relations to the subsoil were actually established ahead of Mongolia’s post-socialist constitution (Mongol Ulsyn Ih Hural, 1992) and civil code (Mongol Ulsyn Ih Hural, 1994a), which both lent further support to the purpose of the Law on Subsoil. The constitution, for example, stated that “natural resources are subject to national sovereignty and state protection” (Art. 6). Whilst individual citizens of Mongolia were entitled to claim ownership (*Mongol Ulsyn irgend ömchliүүлj болох*) of certain areas, the state owned all other land, including subsoil, pasture land, forests, and water sources. If landowners did not use the land in accordance with the interests of environmental protection, the state had the legal authority to ultimately confiscate land entitlements and demand compensation payments. In the mid-1990s, several laws such as the Environmental Protection Law (Mongol Ulsyn Ih Hural, 1995a) and the Law on Water (Mongol Ulsyn Ih Hural, 1995b) were enacted, which again emphasized state interests above those of individual mining investors. Although geological surveys that were carried out during the socialist period demonstrated Mongolia’s immense mineral wealth, the legislation rendered mining operations difficult and unlikely. With legislation that placed significant environmental demands on mining companies without providing long-term stability of land and subsoil ownership, large-scale mining was not a national priority and remained marginal.

Since 1991 Mongolia has received substantial assistance from lending organizations such as the International Monetary Fund, the World Bank, and the Asian Development Bank. The free-market capitalist ideology espoused by these organizations was first witnessed in the Law on Land (Mongol Ulsyn Ih Hural, 1994b), which met much opposition from the general public (Sneath 2001, 2002). The law granted Mongolian and foreign individuals the right to lease (*erhiin gerchilgeegeer ezemshүүлэх*) state-owned land and use it for their private purposes. In 1997, when Mongolia also joined the World Trade Organization, the legislative (and fiscal) environment became further conducive to foreign direct investment in the burgeoning mining sector<sup>8</sup>. The Minerals Law of 1997 (Mongol Ulsyn Ih Hural, 1997) provided an investor-friendly framework that laid the foundation for the subsequent explosive growth in the Mongolian mining sector<sup>9</sup>. It was praised by the international mining community as “one

<sup>8</sup> According to the United Nations Conference on Trade and Development, foreign direct investment into mining, quarrying and petroleum in Mongolia began surging in 1997. Whilst in 1996 FDI hovered around 4.2 million USD, it jumped to 13.2 million USD in 1997 and has continued to rise ever since. Approved FDI stocks in mining, quarrying and petroleum also almost doubled in 1997, from 17.1 million USD in 1996 to 30.3 million USD in 1997 (see UNCTAD Country Profile: Mongolia). Although the levels of FDI are substantially below present-day levels, they evidence an increasing investment flow at the time when Mongolia ratified its Minerals Law and opened up its mining sector for foreign investment.

<sup>9</sup> The investment growth in Mongolia’s mineral resources can be seen as part of a broader geographical restructuring of capital flows. As Bridge shows with regards to the mining boom in the mid-1990s, “the cumulative effect of the legal and fiscal reforms adopted by many emerging markets has been to change the perceived risk/reward ratios for investing in different geologically prospective environments. As the perceived risk of investing in emerging markets like Peru, Papua New Guinea, or Mongolia has declined, so the relative risk associated with traditional investment targets (like North America or South Africa) has increased” (2004:407-408).

of the strongest legal presentations of mineral licensee rights and obligations in the world, and clearly the most investor-friendly and enabling law in Asia” (World Bank, 2004a:52).

In contrast to the Law on Subsoil of 1989, the Minerals Law of 1997 did not contain any references to common and long-term public interests. Moreover, whereas the Mongolian state in earlier laws was positioned as the ultimate landowner who could annul the claims of others, the Minerals Law accentuated the much more liberal position of the state. From being the patron withholding its riches from others, the state was legally construed as the enabling provider. Since the Minerals Law provided “internationally competitive investment provisions” (World Bank, 2004a:50) by enshrining ‘international best practice’, Mongolia “evolved from the owner/operator of mines to become a manager/regulator” (World Bank, 2004a:50). Largely due to this law and the abolition of a ten percent export tax on gold in 2001, Mongolia experienced a surge in the issuing of licenses, especially to foreign companies.

The Minerals Law of 1997 enlisted limited requirements for environmental protection and rehabilitation, and the growth in foreign direct investment in the formal mining sector was soon accompanied by rising concerns about the negative impacts of mining<sup>10</sup>. As environmental issues took precedence in the country’s public media, Mongolian non-governmental organizations began to protest against mining companies. In their shadow, the number of informal sector miners grew and the gold rush began to take shape. At the turn of the millennium, the first law on artisanal mining (*ashigt maltmal gar üildverleliin argaar olborloh*) was drafted. The draft law positioned individual artisanal miners in a legal grey zone where they were required to obtain a license, yet denied the possibility of doing so as long as they carried out their mining activities individually. Furthermore, the proposed law granted local governors the right to “arbitrarily terminate agreements and certificates” (World Bank, 2004a:59), thus allowing for uncertainty and discrimination against artisanal miners. Whilst international development organizations highlighted the already limited rights of artisanal miners (see SDC and MRPAM, 2005), the Mongolian draft law would have allowed for an intensification of such discrimination. Although the draft law was rejected, its main tenets were reproduced in subsequent temporary regulations on ASM, still withholding the right of individual artisanal miners to obtain licenses. This is in stark contrast to the ways in which many other countries have approached artisanal mining. In countries as diverse as Madagascar and Mexico, Ghana and Chile, mining laws openly encourage individual miners to regularize their activities (see for example Hilson, 2002; Tilghman et al., 2007). Mining licenses, concessions, and claims are available to individual miners without a requirement for them to organize themselves in larger groups, such as cooperatives. However, the transformation of independent artisanal miners into well-organized entrepreneurial business ventures appeared to be central to the vision and interests of the Mongolian legislators.

After a decade of structural adjustments and ‘shock therapy’, the Mongolian legislators and politicians began diverting from the path envisioned and cherished by foreign investors and advisors. From 2002, changes to the fiscal regimes governing mining enterprises radically altered the investor climate and

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<sup>10</sup> See High and Schlesinger (in press) for a historically comparative perspective on these concerns.

Mongolia was seen to “have taken a step backwards” (World Bank, 2007:131). Royalty taxes for minerals were increased to a comparatively high level and a windfall profits tax of 68 percent based on commodity price thresholds was introduced<sup>11</sup>. Also, the amended Minerals Law of 2006 (Mongol Ulsyn Ih Hural) introduced the classification of ‘Strategic Mineral Deposit’ (*strategiin ach holbogdol biihii ashigt maltmalyn ord*), where the Government had the right to acquire up to 50 percent interest in operations of substantial economic potential (Art. 5). By allowing for state equity participation, the Government could take a stake in new mines in order to maintain greater control over its mineral wealth and secure greater financial benefits<sup>12</sup>. Although the passing of this law prompted an immediate outcry from mining companies and investment commentators, “the idea of ownership stakes [had] symbolic importance among Mongolians wary of foreign investors” (Namjil, 2008)<sup>13</sup>.

The shift towards greater state participation and control of mining operations was not merely restricted to the prosperous formal mining sector. On 1 April 2008 temporary regulations on ASM were approved by the Parliament, intended for implementation between 2008 and 2015 (Mongol Ulsyn Ih Hural, 2008). Similar to the earlier draft law on artisanal mining of 2000, the temporary regulations required that miners organize themselves in cooperatives, thereby contributing to the “transformation of economically efficient artisanal mining efforts into small-scale mining” (Art. 7). The regulations also stipulated that women and children were to be “eliminated” from the mines and provided with alternative income opportunities (Art. 11.5). Since a law on artisanal mining has yet to be ratified, it remains uncertain to what extent the temporary regulations and the male mining ventures will, and legally can, be supported in new legislation<sup>14</sup>.

In the popular media debates about mining once again rose to prominence in the months leading up to the parliamentary election of 29 June 2008. The country’s largest political parties took oppositional stances on the extent to which the Government should further increase its role in mining developments. Mongolia’s People Revolutionary Party (MPRP) and Democratic Party (DP) were split over who should hold the stake in Strategic Mineral Deposits. The former advocated for the Government, the latter for private Mongolian companies. This deadlock delayed the planned amendments to the Minerals Law and further postponed the signing of a much-anticipated Investment Agreement with Ivanhoe Mines and Rio Tinto for the construction and operation of the huge *Oyu Tolgoi* copper-gold

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<sup>11</sup> The levy applied to any copper sold above \$2600/ton and any gold sold above \$500/ounce. Due to record high gold prices and the increasing unpopularity of the windfall profits tax, the gold price threshold was raised to \$850/ounce in 2008. For comparison, copper is currently trading around \$7178/ton and gold is around \$1213/ounce. Prices were retrieved from the London Metal Exchange and the New York Commodity Exchange on 13 August 2010.

<sup>12</sup> Many advisors and commentators disagreed with the Government’s decision to seek equity participation (e.g. World Bank, 2008; IMF, 2008). Apart from requiring a substantial up-front payment for its share in the particular mining operation, equity participation is also financially more risky than broadly based taxes.

<sup>13</sup> The move towards greater state control over the formal mining sector is also reflected in the ratification in July 2009 of both the Law on Prohibiting Mineral Exploration and Mining Operations at Headwaters of Rivers, Protected Zones of Water Reservoirs and Forested Areas and the Law on Nuclear Energy giving the state a greater degree of ownership and control over uranium deposits. Mongolia claims to have six percent of the world’s uranium resources.

<sup>14</sup> Whilst the male mining cooperatives appear evocative of the past organization of miners in the USSR and socialist Mongolia, the authors of the regulations claim to draw predominantly from projects with artisanal miners in Ecuador, Peru and Bolivia.



deposit in *Ömnö Gov Aimag*. At a time when the global financial crisis was affecting Mongolia's already weakening economy, the Government's ability to attract investors and approve important mining contracts seemed more important than ever. Yet, a turbulent election followed by riots and a four-day state of emergency did not ameliorate the situation<sup>15</sup>. The inflation was at its highest level in more than a decade, the new Government was facing a budget shortfall and the accumulation of debt was spiralling. On 25 August 2009 the parliament made the decision to revoke the windfall profits tax and significantly reduce its stakes in Strategic Mineral Deposits. The amended mining legislation enabled a final resolution to the negotiations over *Oyu Tolgoi*<sup>16</sup>, bringing in some much-needed revenue and potentially attracting mining investors anew; "a move that could finally kick-start the development of Mongolian mining" (Crigger, 2009)<sup>17</sup>.

The post-socialist mining legislation in Mongolia has changed significantly over the years. Whereas laws from the period of 1994 to 2002 largely served private and corporate interests for both Mongolian and foreign citizens, fiscal and legal measures since 2002 have returned the state to a central position with regards to industrial, and possibly also artisanal, mining. The twists and turns taken by the Mongolian legislation have been numerous and diverse; at times following closely the recommendations offered by international advisors, at others new and overtly discouraged directions have been sought instead. Despite the legislative productivity and creativity witnessed throughout the post-socialist period, a law on ASM has still not been ratified. Moreover, draft laws and temporary regulations on ASM have only ever considered cooperatives as the desirable form of organization for artisanal miners. This long-standing refusal to endorse *individualized* artisanal mining is, I suggest, not a mere economic calculation or a legislative oversight. Instead, by looking beyond the courts, the Parliament and its numerous advisors, we can begin to make better sense of these attempts to construct a legal framework for ASM.

## The gold rush

In 2005 and 2006 I carried out 20 months of ethnographic fieldwork in and around the gold mines of the so-called 'ninja capital' of Uyanga (*Uyanga sum*, *Övörhangai Aimag*), located approximately 500 kilometers west of Ulaanbaatar. The term 'ninja' (*ninja*) refers to artisanal gold miners who do not

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<sup>15</sup> The election results showed a clear victory for MPRP, enabling them to form a majority government. Shortly after the intermediate results were announced, the chairman of DP (Ts. Elbegdorj) declared the election to be rigged and violent protests against MPRP began on 1 July 2009. Five people were killed, 300 injured and more than 700 arrested. Around midnight a four-day state of emergency was declared. A year after the riots, Ts. Elbegdorj won the presidential election, defeating N. Enkhbayar (MPRP) who had been the president since 2005.

<sup>16</sup> On 31 March 2010 the Government confirmed that the procedural and administrative conditions contained in the Investment Agreement had been satisfied and the comprehensive Investment Agreement has now taken full legal effect. Ivanhoe Mines retain a controlling 66 percent interest in *Oyu Tolgoi*, whilst the Government holds a 34 percent stake. Rio Tinto joined Ivanhoe Mines as a strategic partner in 2006 and presently holds a 29.6 percent interest in Ivanhoe Mines. For further details on the mine development, see the 2010 Integrated Development Plan on <http://www.ivanhoemines.com>

<sup>17</sup> This recent decline in gold production is evident when comparing the official figures for gold output in kilograms (excludes gold contained in copper concentrate). After peaking in 2005 with an annual production of 24,120 kg, it declined to 22,256 kg in 2006, 17,473 kg in 2007 and 15,184 kg in 2008. Source: the National Statistical Office of Mongolia and the Mineral Resources Authority of Mongolia.

have licences for the areas where they mine. The term is commonly used by the miners themselves, the general population, and state officials. At least among the miners themselves, the term does not contain any particularly negative connotations. Although ninjas mine for gold without possessing the legally required mining license, thus evading formal regulation with regards to taxation, environmental rehabilitation, and land entitlement, they do not generally consider their activities to be ‘illegal’ (*huul bus*) (cf. Roitman, 2005). Indeed, ninjas often cast themselves in opposition to mining companies, which they regard as “bad for Mongolia”, “*they steal our wealth*”<sup>18</sup>. To the general Mongolian public, however, artisanal mining is a national embarrassment that epitomizes illegality, even if it has become a viable source of income for thousands of Mongolians. Before considering the reasons behind this general condemnation of ninja mining, this section first describes the gold rush as it has evolved in Uyanga.

Up until a decade ago the landscape of Uyanga was said to have numerous lakes, large rivers, and dense forests. According to older herders, the grass was so tall that small newborn lambs could run across the steppe, hidden beneath the tall grass. Although such reminiscences may be considered romanticized products of nostalgia and age, they do correspond to some observable physical changes to the landscape, such as dried-out river beds and decreasing tree cover. The mining operations in Uyanga were first initiated in 1990 when a Mongolian company received Government approval to begin mining near the village (*sumyn töv*) (Erel Kompani, 1994:21). As the gold mining company worked its way up the valley, ninjas soon moved in and started panning the company’s tailings for leftover gold. Since more than 50 percent of the gold is estimated to have been ‘left-behind’ by companies at the time, the tailings provided rich and relatively accessible resources for the ninjas (Mongolian Business Development Agency, 2003:37)<sup>19</sup>. When the ninjas encroached on the licensed territory of the company, many were evicted by armed security guards and local police. Whilst many ninjas continued panning for gold in the valley, others began prospecting elsewhere. Today, more than 8000 ninjas are searching for gold in Uyanga’s open placer mines<sup>20</sup>. This particular geological formation of gold requires only minimal technology for its extraction, a small labour force, yet provides a relatively high yield of gold. As a result, significant returns can be generated with minimal investment<sup>21</sup>. Artisanal

<sup>18</sup> A statement that I often heard in the mines was voiced by a middle-aged male ninja: “We are not the ones who steal the gold. We *produce* the gold. We prove the existence of gold and people often try to take advantage of us, free of charge!”

<sup>19</sup> According to a report prepared by Mongolian Business Development Agency (2003:16), the formal gold mining sector in Mongolia has been reluctant to adopt newer and more efficient mining techniques. As a result, upwards of 100 tons of disturbed gold was estimated at the time to be present in companies’ mining waste, predicting a further 100 tons to be ‘wasted’ by 2008. This gold is not financially viable for company-exploration and therefore presented formidable opportunities for ninjas.

<sup>20</sup> Placer deposits are also known as shallow alluvial deposits. They “originated elsewhere and at a later stage ended up ‘placed’ in their locations, mainly by movement of water, but also by movement of wind and sand. Since they are relatively younger than their matrix, they are not geologically integrated with it and hence relatively easy to extract” (Stemmet 1996:8). As opposed to hard-rock ore, the processing of placer gold very rarely involves mercury and other chemicals. So far I have not witnessed any use of chemicals in Uyanga.

<sup>21</sup> The mining success of ninjas also relates to the different cut-off grades for mining companies and artisanal miners. Whereas mining companies generally rely on an average minimum grade of gold in order to continue mining an area, ninja miners are much more flexible and adaptable. Although this sometimes means working hard on a ‘bad mining hole’ (*muu nuh*), it can also mean hitting a small, localized area with returns above 1.0 g/m<sup>3</sup>. According to mining company officials in Uyanga, such grades are certainly financially viable for the company, but due to its large machinery the company is not able

mining in Uyanga grew quickly and became recognized locally as a gold rush (*altny hiirhel*) in 1999-2000, attracting people with diverse professional backgrounds from the local region as well as across the country.

Compared to the sparsely populated steppe land, dotted with occasional clusters of *gers* and dispersed herds of animals, the mines stand out starkly. Upon approaching the mines, distorted noise from loudspeakers mixed with human voices signal one's entry into a markedly different landscape. As the dirt road climbs up across a mountain pass, an unbroken vista across the mining camp hits the visitor: Hundreds of dirty tents and *gers* are pitted closely up against one another. Tracks criss-cross the fringe areas where Russian motorbikes accompany drunken people and stray dogs on the slippery mud roads. Looking further towards the centre of the camp, fragile earthen bridges connect small patches of ground surrounded by deep, unbarricaded mining holes. Groups of miners work hard hawling up heavy bags of gravel, whilst others enjoy a break and a cigarette. Rundown vehicles with tall piles of gravel bags on their carts teem back and forth between mining holes and the river. By the edge of the river numerous people can be seen squatting amidst piles of bags, washing the gravel for gold. Abandoned holes and gaping landslides frame the vista, revealing extensive mining activity right next to people's homes where a single wrong step could have fatal consequences. The observable differences between the mines and the steppe provide an immediate indication of the extent to which life in these areas is lived differently.

In the mines, men and women work alongside each other in teams of four to 16 people. Some scrape loose the gravel inside deep mining holes with a small metal pick, whilst others help transport bags of gravel to the river to start the panning process. Plastic washing pans (*tumpun*) are filled with the gravel, placed under water and swirled around in large circles. Larger stones are taken out and the pan is then submerged again. Eventually the worker ends up with a fine mud containing some shiny particles, mostly the size of snowflakes. The gold is sold to local gold traders (*altny chanj*) and although there is much secrecy surrounding 'how good a hole is', I estimate based on my observations among both miners and gold traders that most miners earn a minimum of 5,000 TG per day (3.57 USD)<sup>22</sup>. Compared to the national average monthly income of 41,000 TG (29 USD) (National Statistical Office of Mongolia, 2006:261), many miners earn a very attractive income comparable to that of white collar workers such as legislators, senior officials, managers, and other professionals<sup>23</sup>. Considering the impact of accidents, illnesses, and drinking on the working hours among miners, I estimate their average monthly income to be at least 100,000 TG (71 USD), thus 2.5 times the national average. Depending on the quality of a mining hole, this income is sometimes earned by working for a month on a single hole.

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to achieve sufficiently high recovery rates in all high-grade areas. Areas that are rich in gold are thus sometimes purposefully left unexplored by the company.

<sup>22</sup> In accordance with the rest of this book, this chapter uses the rounded exchange rate of 2010 where 1,400 TG = 1 USD.

<sup>23</sup> Given recent fluctuations in exchange and inflation rates as well as the increasing gold price, I compare ninja earnings with income figures from 2006.

In addition to the simple and low-investment panning techniques, miners also procure gold in other ways, such as using soft plastic mats, metal drums, and simple sluice boxes to wash the gravel. There is constant invention of new mining equipment in the area. A quick sneak onto company grounds may reveal a new extraction method or a visiting miner from the north may entertain a crowd about new tools. The inspiration and creativity is all around, but turning abstract ideas into actual manufacture is a rarer occurrence. As one of my ninja hosts said: “We are good at what we do. All we need in order to do our work are our hands”<sup>24</sup>. This proud appreciation of self-reliance also means that, regardless of the exact mining technique used, the often self-made machinery is rarely so elaborate as to prevent a newcomer from being able to operate the equipment. No machine is regarded as necessarily ‘male-operated’ or ‘female-operated’, or as particularly appropriate for younger workers or elder workers. As a result, the mining techniques used do not determine the specific composition of the work-team.

In Uyanga, participation on a work-team does not require a binding agreement, a monetary deposit, or other similar formalization. The work-teams are highly transient and organized along informal channels. As stated by a ninja who has worked for several years in Uyanga,

Whoever is a good worker, man or woman, whoever can do the job well, can work on the team. It doesn’t matter where you are from or whether you are a relative of someone on the team. All that matters is that you are hard-working and reliable.

At the end of each work day, miners divide their earnings between them. To my surprise, miners receive the same amount regardless of their age, gender, or experience. Even people working inside mining holes are remunerated similarly to those working above ground, despite facing considerable dangers such as landslides, poisonous gases, and little oxygen. One of the miners on my work-team explained that it would be impossible to not divide the money equally in an area that is so ‘intense’. Given the daily fear and reality of violence, unequal remuneration would likely give rise to physical retribution and immediate exclusion from the area. As she put it, “people will just get upset and beat you up”. Living outside the law in an area as densely populated as the mines and where labour regimes require of people to work closely together on a daily basis, unspoken rules underlie social interactions and are strongly enforced when violated. In the absence of state laws regulating the daily activities of ninjas, customary laws exist. As exemplified in the organization of work-teams and the remuneration of labour, the customary laws of the mines generally place extraordinary emphasis on the miner as an individual, independently of any personal connections, skills, or contributions. Apart from allowing for immense labour flexibility and constant opportunities for prosperity, this dissociation of ninjas from their social and economic standing has also, so far, impeded the polarization of wealth accumulation and emerging formalization that have been central to other gold rush scenarios around the world.

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<sup>24</sup> This bodily emphasis is also reflected in the Mongolian official term for artisanal mining ‘*ashigt maltmal gar üildverleliin argaar olborloh*’, which literally means ‘mining for minerals by use of hands’. In colloquial language, people in Uyanga simply refer to artisanal mining as ‘*shoroo ugaah*’, which means to ‘wash soil’.

In a generally hierarchical society, such emphasis on the equal value of labour is striking and possibly unprecedented. Even during the socialist period, when ideologies of solidarity and policies on equality were espoused in the region, the actual organization of labour remained largely patriarchal and gerontocratic. As Humphrey (1979, 1983) shows with regards to the Karl Marx collective farm in Buryatia, women remained highly subordinate to their husbands and the remuneration was far from equal. The region of Buryatia was known for “the paying of bride-price, polygyny, the non-participation of women in politics, and male attitudes to women as being impure” which were considered “particularly degrading and unfitting in a socialist society” (Humphrey, 1979:1). Whilst the Communist Party issued policies and provided enabling facilities to alter women’s position in society, Humphrey shows how in effect the structures of gender inequality were reinforced through the organization of labour at the collective farm. Military service required men to spend years away from their households and during this period women were isolated with all domestic chores and childcare. Since most of the work at the collective farm was located far from the towns, where facilities such as schools, health care, and shops were located, it was difficult for women to take part in labour activities on equal terms with men. In a region famous for its large families, an acute shortage of rural schools soon arose and as a result, many women chose to work close to the town centres where they could more easily look after the children and carry out domestic responsibilities. Although women worked similar, if not longer, hours than men, their work was not remunerated on equal terms. Despite attempts to alter the labour relations, the socialist ideology of equality was thus far from being achieved through the collectivization of the pastoral economy in Buryatia.

Given the long-standing practice of hierarchical labour relations in the Mongolian cultural region, the degree of equality in the organization and remuneration of *ninja* labour in the current gold rush highlights a way of life that might not have historical precedents, even in the socialist period. Whilst such historical uniqueness is arresting, it becomes further intriguing when viewed in a local contemporary perspective. Many miners come from nearby herding families and still return to their homes on frequent visits. However, the labour regimes of herding households are far from similar to those of the mines.

The pastoral households (*ails*) in Uyanga tend herds of yaks, horses, sheep, and goats. Whereas some animals can graze for days, weeks and sometimes months without being tended by herdsman, most of the herd requires daily attention. In the early morning young girls of the household rise to fetch the yak cows for milking and herd them onto fertile pasture once the milking rounds have been completed. In most households in Uyanga women are only involved in herding dairy animals; the rest of the day is spent around the household, collecting dung for burning, drawing water for cooking, preparing dairy products and daily meals, cleaning the domestic space, and washing clothes. These tasks are carried out usually without assistance from male members of the household and are frequently accompanied by comments and directions from the male household head (*geriin ezen*), who also gives commands to the male members of the household. The household head thus decides who does what and when. The household head is the ultimate point of reference in decision-making processes concerning domestic and pastoral matters. In times of illness, he decides whether it is necessary to speak to the doctor in the

village. In religious practices, he decides whether the time is appropriate to visit the local Buddhist monastery. In these respects, a hierarchical order, with the household head at its apex, structures interactions between all household members throughout the day.

Whilst such hierarchical relations appear particularly pronounced in herding households of the region (see High, 2008a), they are expressed to varying degrees throughout Mongolia. Hierarchical relations are expressed through deferential linguistic markers (Vreeland, 1954), the structured use of domestic space (Lindskog, 2000), and gendered behaviour (Humphrey, 1993). The extensive hierarchies that organize much of daily life on the steppe in Uyanga are thus not isolated cultural practices, but rather appear to be a general characteristic of Mongolian sociality. These practices pervade many aspects of daily life, including the organization of herding labour. As people take part in herding labour regimes, the organization and remuneration of their labour are intertwined with the hierarchical household relations in which they take part. Given the practical demands of pastoralism, it might not be surprising that such elaborate and extensive hierarchies inform life on the steppe. Several separate herds have to be tended to, whilst numerous domestic tasks must be carried out. It might be more surprising that the same hierarchical organization of labour is *not* reproduced in the mines, especially since the labourers themselves, as mentioned above, are often the same. Despite a long history of regional hierarchical relations, continuing even through the socialist period, *ninja* miners today are organizing their labour activities in ways that differ remarkably from both their predecessors and local contemporaries<sup>25</sup>.

## Feared strangers

The emphasis on non-hierarchical relations is not only evident in the labour practices of *ninjas*, but also in one of their most common leisure activities, namely drinking, in particular the consumption of vodka. Many male and female miners gather in the evenings for informal drinking sessions, lasting well into the early hours of the following day. It is also common among miners to shirk for several days and take part in longer binges. Although many miners in Uyanga come from the surrounding countryside and are still periodically involved in herding, the social consumption of alcohol is not informed by the same formal hospitality as among the herding households on the steppe<sup>26</sup>. Indeed, the relatively unstructured organization of social drinking in the mines is often accompanied by violent brawls and fears of poisoning, highlighting the tensions when living with ‘strangers’ (*gadny ulsuud*).

During my stay with a herding family on the steppe, one of the sons left for the mines. He had a couple of days earlier told me about his upcoming departure and described excitedly how he hoped to be working at the bottom of the mining holes. The prospect of scrapping the mining shafts together with

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<sup>25</sup> The hierarchical organization of labour in present-day Mongolia also extends to industrialized practices where executives, boards, managers, and line-managers in descending order shoulder responsibility and enforce decisions. Hierarchical labour relations are thus far from exclusive to pastoral economies, socialist or otherwise.

<sup>26</sup> As described in detail by Lacaze (2002), drinking among herders is generally informed by strict ideas about appropriate interactions between guest and host, ranging from the use of space and restricted conversation to legitimate demands and acceptable behaviour.

sometimes as many as 10 others, producing gold out of dirt, lured more than any of the other jobs in the mines. However, his trip to the mines was short, returning to our *ail* already the same evening. He reluctantly told his mother that he had not done any mining, but his eyes lit up when he recounted how he had been drinking heavily with distant relatives. The next day he returned to the mines, but this time we did not see him again. It was rumoured that he had been working hard on a work-team and every night drunk up the money he had earned. Since his mother was of poor health and needed his financial support for medical care, word had been brought to him, but he did not want to come back<sup>27</sup>. The mines with its many attractions seemed to pull him harder than the family demands on the steppe<sup>28</sup>.

When people drink in the mines, it is generally informal and rather chaotic. There is rarely an identifiable host and anyone can bring a bottle of vodka, which they may drink on their own or choose to share with others. Multiple drinking cups circulate in ad-hoc rounds and there are no prescribed interactions between the people present. Since many miners bring with them little, if any, furniture, the usual indicators of ranked seating are largely absent. Sitting spread across the floor amidst soiled mining equipment, precious motorbikes, and foldout beds, both men and women partake in the drinking. As they reach increasingly drunken states, arguments and brawls often arise. The following situation describes one such brawl that arose during my fieldwork:

Vodka bottles were passed around and people were relaxing after a hard working day. Suddenly a young lad got embroiled in a heated and aggressive argument with an older, visibly injured, man. As the old man whispered to the men next to him, the lad suddenly jumped at him, threatening him angrily with a fist. Everybody told him to calm down and leave the *ger*. Before leaving he couldn't resist punching the old man, who instantly chased after him. As soon as the two men had left, people resumed the drinking rounds and conversations continued once again.

Instead of asserting the conventional hierarchical relations, drinking in the mines produces a form of sociality in which personal distinctions and differences are heightened rather than concealed. The idiosyncrasy of individual miners is allowed its full expression and not subordinated to pervasive Mongolian ideas about *yös* (rule, custom). As miners refrain from using both linguistic markers and bodily gestures of deference, they position themselves as relatively equal and independent individuals. Whilst this heightened individuality is expressed in the equal remuneration of labour, it also generates a markedly different way of life where expressions of respect and status, common elsewhere in Mongolia, are largely absent. Living beyond the expectations of formalized hierarchical interpersonal relations, life in the mines is erratic and intense. This intensity is perhaps best conveyed in people's

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<sup>27</sup> His mother was a widow and all her children had moved to mining areas. Without any daughters-in-law and thus no extended household (*ail*), she had moved in with a wealthy cousin. Her herd consisted of four yaks and without monetary contributions from her children, she had to rely on her pension for all monetary expenses.

<sup>28</sup> The attraction of drinking not only affects relations with family members living away from the mines, but also when ninjas live together with spouses. In one of my host families in the mines, a ninja drank up 120,000 TG while his wife was away for one week. She ran a *ger*-shop and had saved up money to buy stock. She thought that her husband did not know where she had hid her money.

fears of adulterated drinks when partaking in drinking sessions. As stated by a miner who had spent the last eight years in the mines:

Here there are people from all over Mongolia and you never know what they might do. They might say they'll drink beer, but someone will add poison (*hor*) to it. Many people die because of drinking, both men and women. People here are so careless and disrespectful to each other. It's dangerous.

As the gold rush has brought together thousands of people from diverse geographical, professional, and personal backgrounds, drinking situations invariably include people whose intentions are unknown and unpredictable. Living beyond the social networks of which others are part, such people are highly feared for their potentially malign intentions. Given the absence of formalized relations of respect, miners are seldom able to achieve any degree of certainty concerning the intentions of strangers. As miners emphasize their heightened individuality, social relations become a strained achievement.

The gold rush in Uyanga provides many Mongolians with a new and substantial income opportunity, whilst also challenging common Mongolian notions of how people ought to live together. As shown by Dulam (2006), the recognition of status is central to Mongolian conviviality and is generally expressed through displays of respect and deference. With the fundamental importance attached to obligatory generosity, such displays define people's relations with other agents, whether human or non-human (High, 2008b). As people give offerings to spirits or vodka to guests, hierarchical relationships are recognized and asserted<sup>29</sup>. When miners alter this configuration, they evade normative sociality and creatively contemplate other ways of living. That is, rather than merely generating new economic possibilities, the gold rush has also nurtured new ways of life for thousands of the country's population. Whilst the World Bank considers the gold rush a "viable solution" to "the adverse effects of economic restructuring" (World Bank, 2004b:ii), it should be clear that the gold rush is much more than a poverty-related income-generating phenomenon. By recognizing both the social and economic projects in which artisanal miners are engaged, we are now in a better position to understand the long-standing reluctance to follow in the footsteps of other countries and initiate the legalization of ASM practices as recommended by international advisors. Moreover, the preference among Mongolian legislators for the legal notion of mining cooperatives emerges as no simple reflection of foreign advisors' experiences abroad, but indeed highlights Mongolian ideas about how life ought to be lived on the steppe as well as in the mines.

## Conclusion

Draft laws, temporary regulations, and enacted laws have over the years addressed various modes of human engagement with the land and its riches in Mongolia. Some laws, such as the Law on Land of

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<sup>29</sup> My previous work (High, 2008b) discusses local conceptions of the spiritual landscape where spirits are said to 'own' and reside in the ground, rivers, trees, stones, etc. When taboos associated with these spirits are ignored (for example by gold mining), spirits become upset and may take out their anger on people. Herders and miners voice much concern about the angered spirits in Uyanga.



1994, met strong opposition by the general public, whilst others passed largely unnoticed. Regardless of the public response to specific laws, however, legislative processes create distinctions that become crucial in later evaluations of human activities. Although the formal distinctions between legal and illegal activities cannot simply be presumed to be relevant to people's individual moral evaluations of present practices, laws articulate general distinctions that emerge from their dialectic with society. As noted by Pottage (2004), state laws do not exist above or beyond society, without any reference to or dialogue with the ways in which people go about their lives. Rather, state laws are cultural artefacts that tell us about legal as well as popular conceptions of the moral matrix of life. When current Mongolian legislation thus denies the legalization of individualized ninja mining, a particular Mongolian interpretation of how people ought to live slowly begins to appear.

By analyzing both the gold rush and the emerging mining legislation in Mongolia, this chapter has aimed to juxtapose legal processes with ethnographic data concerning the experiences of miners. Apart from showing how both kinds of source material can be subjected to cultural analysis, my aim has also been to consider the ways in which illegality is construed. As the incipient mining legislation continues to prohibit individualized artisanal mining, draft laws and temporary regulations have restricted possible legal framework for ASM to mining cooperatives. This is despite the fact that medium and large-scale mining can legally be carried out by an individual. I suggest that it is no coincidence that the idea of individualized mining in the context of the current gold rush is beyond cultural validation. In Mongolia there are certain discourses and practices that specifically centre on notions of the individual. However, the ways in which gold rush frontiers have allowed for local explorations into autonomy and independence are intense and possibly even exceptional. As ninja miners deny expectations of respect and deference, they position themselves as independent agents who, not surprisingly, do not share the popular Mongolian interpretation of their practices as 'illegal'. To do so would be a first step toward embracing not only the presence of *yös* (rule, custom), but indeed also hierarchy.

I do not imagine that Mongolian legislators and their international advisors are intimately aware of how life is lived in the gold mines. They may never have anticipated the full extent to which such unconventional ways of living could unfold on the Mongolian steppe. Instead, I suggest that the enduring reluctance to legalize individualized artisanal mining reflects and re-asserts specific Mongolian ideas about how people ought to live together: a life where *yös* and hierarchy are indeed central. The legal notion of mining collectives as opposed to individual miners thus resonates particularly well with long-standing social practices in the region, drawing on immediate parallels in the socialist past. However, as the gold rush develops, attracting more and more people to the camps, it seems unlikely that the Mongolian legislators can ignore the actual realities of contemporary life in the mines. Only the future will tell the extent to which ninja mining, as it is carried out today, can ever be legally recognized and incorporated into new interpretations of Mongolian conviviality. Perhaps this legislative impasse will be preempted by the gold rush itself. As gold rushes elsewhere, the Mongolian ninjas may begin to embrace increasing specialization and formalization, small companies may emerge, labour hierarchies may develop. But, until that speculative moment, ninja miners on the Mongolian

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steppe not only explore new economic opportunities but also contemplate novel ways of living outside the law.

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